

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 7914/MUM/2011**  
**Assessment Year: 2004-05**

Dy. CIT-3(3)(2),  
Room No. 609, 6<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

M/s Suparna Chemicals  
Ltd.,  
**Vs.** 54F, Mittal Tower,  
Nariman Point,  
Mumbai-400021.  
**PAN No. AABCS 4578 F**  
**Respondent**

**Assessee by** : None  
**Revenue by** : Mr. A.N. Bhalekar, DR

Date of Hearing : 03/05/2023  
Date of pronouncement : 11/05/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has arisen on account of order of the Tribunal dated 09.02.2023 in Miscellaneous Application No. 133/Mum/2020 wherein order passed by the Tribunal dated 19.08.2019 has been recalled. The relevant finding of the Tribunal in order dated 09.02.2023 is reproduced as under:

*“5. On careful consideration, we find that there was a revenue audit objection in the case, which is accepted by the Department and remedial action has been*



*initiated under Section 148 of the Act. The letter dated 29th October, 2007, by ITO, Technical-3, Mumbai, addressed to the learned Assessing Officer also confirmed the same. Therefore, this appeal of the learned Assessing Officer could not have been disposed off on account of low tax effect in view of Para 10(c) of CBDT circular no.3 of 2018 amended on 20th August, 2018. In view of this, the order passed by the coordinate Bench in ITA No.7914/Mum/2011 for A.Y. 2004-05 dated 19th August, 2019, suffers from mistake, hence, is recalled. The registry is directed to fix the appeal accordingly.”*

2. On further perusal of the record, we find that in the case, the appeal was heard for the first time by the Tribunal on 28.02.2017 and order was passed on 19.04.2017 dismissing the appeal filed by the Revenue. Against said order, the Revenue had preferred Miscellaneous Application in respect of Ground No. 1 decided by the Tribunal and submitted that assessee was allowed deduction in respect of technical knowhow under both the sections i.e. section 35AB and section 37(1) of the Act simultaneously. In view of the mistake apparent from record, the Tribunal recalled the appeal to the extent of deciding the ground No. 1 of the appeal. This recalled appeal was dismissed by the Tribunal on 19/08/2019 under tax effect Circular of CBDT but recalled by the Tribunal being falling under the exception to the CBDT tax effect circular.

2.1 In view of above facts and circumstances in the present appeal before us, the issue is in respect of adjudication of the ground No. 1 of the appeal of the Revenue.



3. Before us, none represented on behalf of the assessee despite notifying through registered post as well as through the Income-tax Department. On behalf of the assessee, a written submission has been filed wherein assessee has submitted that matter may be remitted back to the file of the Assessing Officer for the purpose of the examination of double deduction by the assessee because in view of old matter relevant records were not readily traceable.

4. On the other hand, the Ld. Departmental Representative (DR) submitted that assessee could not rebut the claim of the revenue that the assessee has claimed deduction in respect of technical know-how, twice, firstly under the section 35AB considering the expenses as capital expenditure and, secondly u/s 37(1) considering the same as revenue expenditure.

5. We find that the miscellaneous application proceedings also was decided ex-parte qua the assessee. In our opinion, this issue is of subject matter of the verification by the Assessing Officer from the details of financial statement of the assessee vis-à-vis the return of income and therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer. The assessee is directed to provide all the necessary documents which will be considered by the Assessing Officer in accordance with law. If the assessee fails to provide necessary documents for verification by the Assessing Officer, the Assessing Officer is at liberty to decide the issue as per the provisions of the Act.



5. In the result, the appeal of the Revenue on ground No. 1 is allowed for statistical purposes.

**Order pronounced in the open Court on 11/05/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 11/05/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**